

# **Exhibit 2**

**BIRZON & ASSOCIATES, P.C.**  
*Attorneys at Law*

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[www.birzonandassociates.com](http://www.birzonandassociates.com)

*By: Appointment Only*  
405 Lexington Avenue  
New York, NY 10174

September 21, 2023

Via email: [Sean.Carberry@suffolkcountyny.gov](mailto:Sean.Carberry@suffolkcountyny.gov)  
Assistant District Attorney Sean Carberry

Re: The People of the State of New York v. Robert P. Zorn  
Case No.: CR-012792-23SU

Dear ADA Carberry:

I am writing to you on behalf of my client, Robert P. Zorn, the above referenced defendant. At issue is the pending charge against my client of a violation of Penal Law 155.35 01. As my client was the Director of Sales at Supplemental Manufacturers Partnership, Inc. (hereinafter "SMP") he, as well as other employees and superiors at SMP regularly engaged in the practice of providing free samples of products SMP derived from outside sources (third parties) to ultimately generate sales. Historically, the "free sample" marketing approach was highly successful and resulted in significant revenue and profits to SMP to the best of my understanding. There seems to be no question that the marketing approach of free samples resulted in significant and recurrent retail orders from new and existing customers of SMP for the benefit of SMP.

There is no secret that there is apparent "bad blood" between my client and his employer which resulted after his employer dramatically revised and effectively reduced my client's compensation formula from commission based to profit based. At issue is the alleged provision of 3600 gummies to [REDACTED], a Canadian Corporation who had requested the samples for purposes of evaluation, testing, and ideally approval by the Canadian counterpart agency to the USFDA; namely "Health Canada".

A seminal issue in this case aside from the established use of samples is corroborated by emails and texts. Random samples are attached hereto regarding the use of free samples. The use of providing prospective customers with free samples is set forth in a series of emails attached hereto as **Exhibit "A"** consisting of an email from Frank Cantone, now the Chief Executor Officer of SMP and from Phil Sassano as well. Lastly, the \$300 paid by [REDACTED] to my client was not paid at the expense of or to the detriment of my client's employer. In fact, it was paid to expedite a request by [REDACTED] to have my client's products tested and ideally approved by

the Canadian version of the FDA. As set forth elsewhere in this communication, my client's efforts resulted in sales to [REDACTED] which were both profitable and productive to SMP.

The valuation of \$9,000 set forth in the deposition of the complainant David Borst ("Borst") in support of the felony complaint is false and purposely misleading. [REDACTED]

[REDACTED]

The document that I relied upon to establish these valuations per gummy is a business record which is available to be viewed and accessed pursuant to the Steward Communications Act passed in 1986 which is part of the Electronic Communications Privacy Act of Federal Law that protects the privacy of user's electronic communications and records.

In addition, as counsel to the defendant, I have learned that the complainant David Borst and presumably with the knowledge and consent of his employer engaged in fraudulent conduct resulting in the arrest and prosecution of my client for a crime he did not commit. As counsel to the Defendant, it is my obligation to report to the Court fraudulent conduct of any person as set forth in Rule 3.3(b) of the New York Rules of Professional Conduct. Rule 3.3(b) covers past events and affords for remedial action to be taken. Further, this affirmative duty of an attorney to reveal fraud extends to any misrepresentation that might otherwise be deemed to be confidential.

Predictably, SMP and/or Borst never understood that the Suffolk County District Attorney's Office would know the true value of the gummies, that were provided to [REDACTED] to generate sales on behalf of SMP. What the complainant David Borst and SMP failed to reveal to your office is the fact that [REDACTED] had asked for these gummies on an expedited basis and on account of the overtime work and effort expended by my client with the assistance of a co-worker resulted in [REDACTED] order directly from SMP gummies believed to be in a sales order in excess of \$100,000, if not more.

I am told that a regular stream of emails regarding SMP's use and encouragement of providing free samples to perspective or established customers in order to generate additional sales.

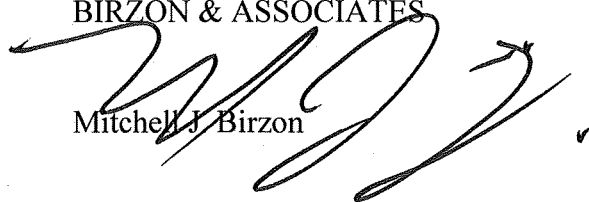
In closing, it is my belief that David Borst and SMP engaged in a purposeful campaign to defraud your Office and by doing so, resulted in the wrongful arrest and felony prosecution of my client.

I request that you, being afforded prosecutorial discretion to do so, investigate the claims set forth herein and if corroborated, dismiss this matter in the interest of justice. I thank you in advance for your anticipated cooperation.

Sincerely,

BIRZON & ASSOCIATES

Mitchell J. Birzon

A handwritten signature in black ink, appearing to read 'MJB', is written over the printed name 'Mitchell J. Birzon'.

MJB:sl  
Enclosure

**EXHIBIT “A”**

9/6/23, 6:24 AM

Mail - Steven Milano - Outlook

RE: New Product Alert - InstaSorb Collagen Peptides + Supergreens

Frank Cantone &lt;frank@smpnutra.com&gt;

Tue 12/1/2020 3:33 PM

To: Phil Sassano &lt;phil@havasunutrition.com&gt;; Steven Milano &lt;steve@smpnutra.com&gt;

**Frank J. Cantone****Chief Executive Officer**

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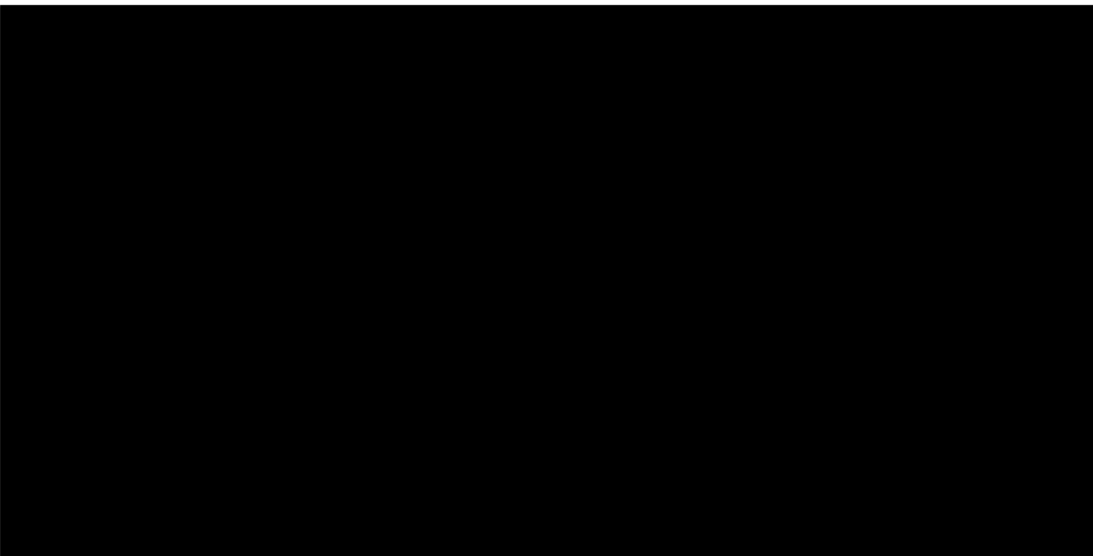
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**From:** Phil Sassano <phil@havasunutrition.com>**Sent:** Tuesday, December 1, 2020 3:20 PM**To:** Steven Milano <steve@smpnutra.com>**Cc:** Frank Cantone <frank@smpnutra.com>

Phil Sassano  
 phil@havasunutrition.com  
 Supply Chain Manager  
 Cell: 727-667-7726  
 SKYPE: philsassano

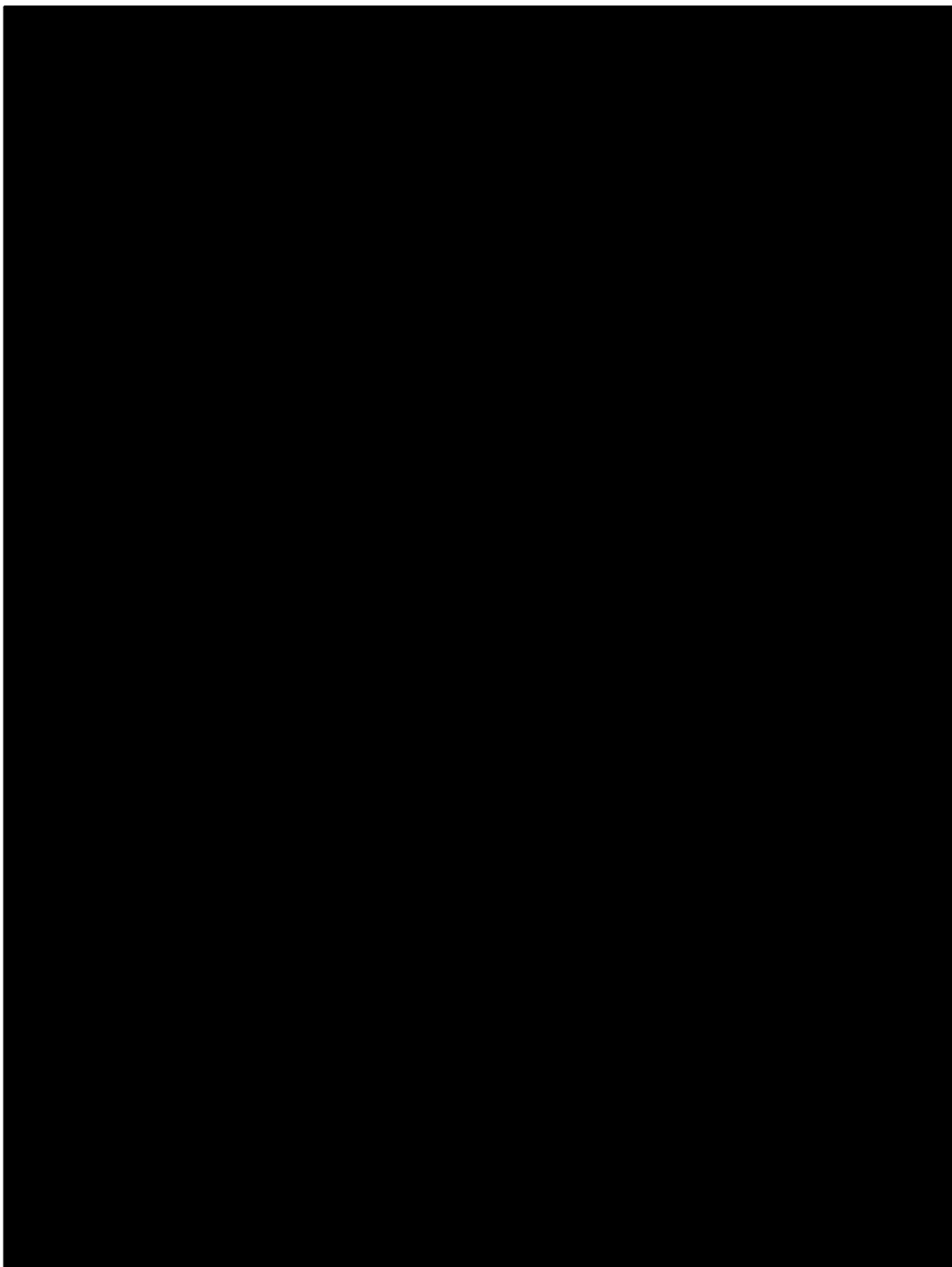
On Dec 1, 2020, at 2:36 PM, Steven Milano &lt;steve@smpnutra.com&gt; wrote:

**Steven S. Milano**

Managing Partner

9/6/23, 6:24 AM

Mail - Steven Milano - Outlook



9/6/23, 6:24 AM

Mail - Steven Milano - Outlook



**Steven S. Milano**  
Managing Partner  
Supplement Manufacturing Partner, Inc.  
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Address: 250 Executive Drive Unit L,  
Edgewood, NY, 11717  
[www.SMPNutra.com](http://www.SMPNutra.com)  
Direct Line: 631-258-2830

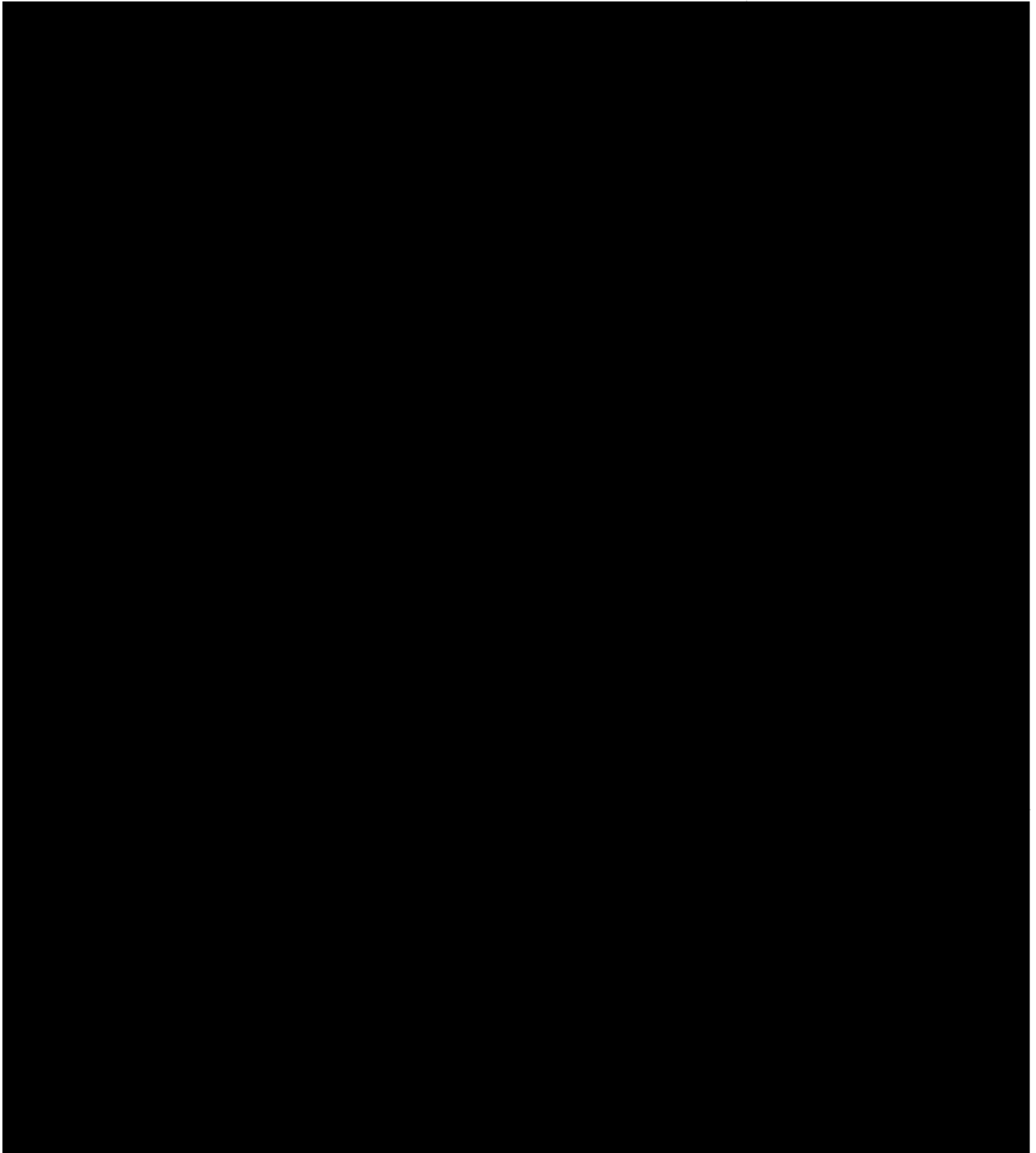
[smpnutra.com](http://smpnutra.com), 250 Executive Drive, Suite L, Brentwood, New York 11717, United States, 833-816-9896  
[Unsubscribe](#) [Manage preferences](#)





**EXHIBIT “B”**

Hello All,

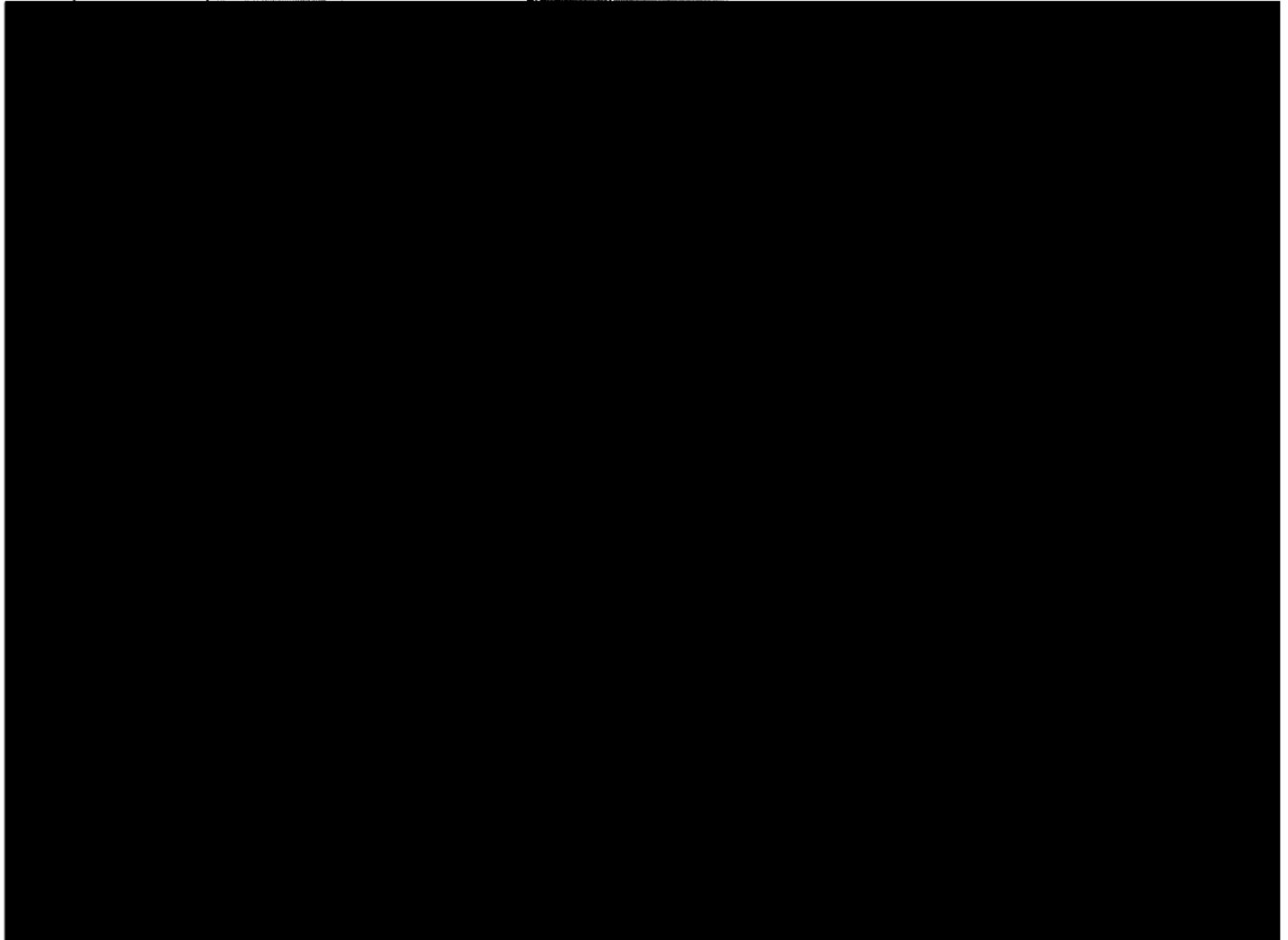


*Nicholas P. Aglio*  
Operations Manager

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**From:** Frank Cantone <[frank@smpnutra.com](mailto:frank@smpnutra.com)>  
**Sent:** Monday, July 24, 2023 5:50 PM  
**To:** Bill of Materials <[bom@smpnutra.com](mailto:bom@smpnutra.com)>; Karen Carrasco <[karen@smsnutra.com](mailto:karen@smsnutra.com)>; John DiMartino <[jdimartino@smpnutra.com](mailto:jdimartino@smpnutra.com)>; Mike Mercurio <[mike@smpnutra.com](mailto:mike@smpnutra.com)>; Kyle Petersen <[kyle@smpnutra.com](mailto:kyle@smpnutra.com)>; John Riccobono <[john@smpnutra.com](mailto:john@smpnutra.com)>; Mike Tripodi <[mtipodi@smpnutra.com](mailto:mtipodi@smpnutra.com)>; Zach Passarella <[zach@smpnutra.com](mailto:zach@smpnutra.com)>; Amber Palazzo <[compliance@smpnutra.com](mailto:compliance@smpnutra.com)>; Conor Cahill <[conor@smpnutra.com](mailto:conor@smpnutra.com)>; Quality Control <[quality@smpnutra.com](mailto:quality@smpnutra.com)>; Steven Milano <[steve@smpnutra.com](mailto:steve@smpnutra.com)>; Billy Harrison <[billy@smsnutra.com](mailto:billy@smsnutra.com)>  
**Cc:** Raven DePrisco <[raven@smpnutra.com](mailto:raven@smpnutra.com)>; Lori Toshek <[lori@smpnutra.com](mailto:lori@smpnutra.com)>; Amber Palazzo <[compliance@smpnutra.com](mailto:compliance@smpnutra.com)>; Tauheed Khan <[qc@smpnutra.com](mailto:qc@smpnutra.com)>





*Frank J. Cantone*

**Chief Executive Officer**

**SMP Nutra & SMS Nutra**

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**Contact [raven@smpnutra.com](mailto:raven@smpnutra.com) to book a meeting with me!**

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